

Staff's Proposed Changes to Proposed Regulation Order

Airborne Toxic Control Measure to Reduce Emissions of Toxic Air Contaminants from Outdoor Residential Waste Burning February 21, 2002

The ARB staff is proposing the following changes to the proposed Airborne Toxic Control Measure to Reduce Emissions of Toxic Air Contaminants from Outdoor Residential Waste Burning. The ~~strikeout~~ indicates deletions, and the underline indicates additions.

(a) Applicability

No changes

(b) Definitions

The following definitions have been deleted as they are no longer used in the modified regulation:

- ~~(b)(6) — "Approved transfer station or disposal facility" means a transfer station, landfill, or municipal waste incinerator with a valid operating permit from the solid waste authority with jurisdiction over its operation.~~
- ~~(b)(9) — "Available regular waste pickup service" means the availability of mandatory or voluntary regular waste collection service, through a licensed waste hauler, by virtue of the residence's location within an area franchised by the local jurisdiction with authority to delineate and to franchise geographic service areas, or through regular waste collection service provided directly by the local jurisdiction.~~
- ~~(b)(12) — "Communal or Community Dumpster" means a dumpster or bin at a fixed location and used by more than one household, under contract with a licensed waste hauler, for disposal of residential waste.~~
- ~~(b)(19) — "Mandatory regular waste pickup service" means regular waste collection provided to residences by a local agency or an approved waste hauler, where the local waste authority has designated a franchise or a permit, and where each household is required to pay for and use the pickup service.~~
- ~~(b)(27) — "Voluntary regular waste pickup service" means regular waste collection offered to residences by a local agency or an approved waste hauler, where the local waste authority has designated a franchise or a permit, but where each household has the option of not paying for and receiving the pickup service that is available.~~

The following definitions have been added to reflect new language in the modified regulation:

- (b)(8) "Census zip code" means a Zip Code[®] tabulation area, a statistical geographic entity that approximates the delivery area for a U.S. Postal Service five-digit Zip Code. Census zip codes are aggregations of census blocks that have the same predominate Zip Code associated with the mailing addresses in the U.S. Census Bureau's Master Address File. Census zip codes do not precisely depict Zip Code delivery areas, and do not include all Zip Codes used for mail delivery. For the purposes of this regulation, census zip codes are referenced to the most recent national decennial census completed by the U.S. Census Bureau.
- (b)(9) "Chief fire official" means the ranking officer in the authority having jurisdiction with responsibility for fire protection within a defined geographic region of an air district, or his or her designee. The chief fire official may be a federal, state, county or municipal employee, depending on the extent of the fire jurisdiction. In State or Federal Responsibility Areas for wildland protection, the state or federal official's determination overrides county authority in regards to burn permits.
- (b)(13) "Incorporated place" means the city, town, municipality or village reported to the U.S. Census Bureau as being legally in existence under California law at the time of the most recent national decennial census completed by the U.S. Census Bureau. For the purposes of calculating population density for this regulation, incorporated places include the FIPS Place Class Codes C1, C7 and C8, as defined by the U.S. Census Bureau.
- (b)(18) "Population density" means the number of people within a census zip code divided by the area of the census zip code after subtracting the population and area of all incorporated places within the census zip code.

(c) Prohibitions

No changes

(d) Compliance Schedule

Section (d)(2) is amended to read:

- (d)(2) Unless an air district adopts an earlier effective date under in accordance with section 39666(d) of the Health and Safety Code, ~~or applies for~~

~~exemptions under subsection (e), below,~~ the prohibitions set forth in subsection (c) shall become effective on ~~July 1, 2003~~January 1, 2004.

This change has been made to allow additional time for public education and outreach efforts prior to the effective date of the regulation. The strikeout language has been deleted because the exemption process only addresses a few of the prohibitions contained in subsection (c), therefore the effective date will still be applicable to the remaining prohibitions.

Section (d)(3) is added to read:

(d)(3) Beginning no later than January 1, 2003, the ARB shall conduct a public education and outreach program with respect to the regulation, public health impacts of residential waste burning, and available alternatives to burning.

This clause has been added to reflect the importance of public education and outreach in implementing the regulation, alerting the public to the health risks of burning, and providing information on available alternatives. The ARB will work with the air districts and fire agencies to develop and distribute appropriate educational materials.

(e) Exemptions

Section (e) has been replaced in its entirety with the following modified language:

(e)(1) No exemption from the prohibitions set forth in subsections (c)(1) or (c)(2) is available for an incorporated place in any census zip code or census zip code sub-area.

In densely populated areas such as incorporated cities and towns, the health risks from burning are the highest, and alternative waste disposal methods are more easily available. Therefore no exemptions are provided. In these incorporated areas, households may only burn clean, dry, natural vegetation, and may not use a burn barrel or incinerator.

(e)(2) Where the population density is less than or equal to 3.0 within the boundaries of any census zip code within an air district, the following exemptions apply:

(A) dry non-glossy paper and cardboard may be burned.

(B) burn barrels or incinerators may be used.

This clause provides an automatic exemption where the population density for any census zip code is less than or equal to 3.0 people per square mile within an air district. Households in these exemption areas may burn dry, non-glossy paper and cardboard, and continue

use of a burn barrel. In these very rural areas, the potential for community health impacts are minimized, and alternative waste disposal options may not be readily available. However, due to the greater health risks posed by the burning of plastics and other synthetic materials, no exemptions will be provided for burning these materials.

- (e)(3) Where the population density is greater than 3.0 but less than or equal to 10.0 within the boundaries of any census zip code within an air district, an air district may file a Request for Exemption to allow the burning of dry non-glossy paper and cardboard, or the use of burn barrels or incinerators, or both, subject to the provisions of (e)(10).

Where the population density is greater than 3.0 but less than or equal to 10.0 people per square mile in census zip codes, an air district may apply for an exemption for census zip codes within an air district, subject to certain provisions described in subsection (e)(10). Households in these exemption areas may burn dry, non-glossy paper and cardboard, or continue use of a burn barrel, or both. This tier has been included in the regulation to recognize that there are intermediate areas where population density is somewhat low, but alternative waste disposal options may be more readily available. Due to the greater health risks posed by the burning of plastics and other synthetic materials, no exemptions will be provided for burning these materials.

- (e)(4) As part of any Request for Exemption submitted under subsection (e)(3), an air district may create sub-areas within a census zip code where the prohibitions set forth in subsections (c)(1) and (c)(2) still apply, subject to the provisions of (e)(10).

Because more densely populated, yet unincorporated, communities may exist within this population density tier where community health impacts would be greater, air districts have the option of specifying sub-areas within any census zip code where the prohibitions of (c)(1) and (c)(2) would still apply.

- (e)(5) Where the population density is greater than 10.0 within the boundaries of any census zip code within an air district, an air district may file a Request for Exemption to create sub-areas within a census zip code to allow the burning of dry non-glossy paper and cardboard, or the use of burn barrels or incinerators, or both, subject to the provisions of subsection (e)(10), provided the sub-area has a population density of less than or equal to 3.0.

Where the population density is greater than 10.0 people per square mile within an air district in census zip codes, an air district may only

request an exemption for a sub-area of the zip code where the population density is less than or equal to 3.0 people per square mile. This provision allows an air district to request limited exemptions for sub-areas of a census zip code in recognition that there can be very remote areas within a large zip code. The exemption request for these sub-areas must meet all of the additional provisions contained in subsection (e)(10).

- (e)(6) The prohibition contained in subsection (c)(2) of this regulation shall not apply in any jurisdiction where a local ordinance or other enforceable mechanism is in effect on January 4, 2002 requiring the use of a burn barrel or incinerator to burn allowable combustibles, unless the local ordinance or other enforceable mechanism is subsequently rescinded or revoked.

This clause has been included to specify that the regulation does not override local ordinances or other enforceable mechanisms that currently require the use of burn barrels or incinerators, unless the local ordinance is later revoked.

- (e)(7) No air district shall file a Request for Exemption from subsection (c)(1) to allow the burning of dry non-glossy paper and cardboard if it is prohibited by air district rules in effect on January 4, 2002, or within a geographic area where it is prohibited by a local ordinance or other enforceable mechanism in effect January 4, 2002.

This clause has been included to ensure that no backsliding occurs from existing rules and regulations on materials that can be burned. Therefore, an air district may not request an exemption for any materials currently prohibited under their air district rules. Similarly, an exemption cannot be requested for the area covered by a local ordinance or other enforceable mechanism where the materials are currently prohibited.

- (e)(8) No air district shall file a Request for Exemption from subsection (c)(2) to allow the use of a burn barrel or incinerator outdoors at a residence if it is prohibited by air district rules in effect on January 4, 2002 or within a geographic area where use of a burn barrel or is prohibited by a local ordinance or other enforceable mechanism in effect January 4, 2002.

This clause is included to ensure that no backsliding occurs from existing rules and regulations on the use of burn barrels. Therefore, an air district may not request an exemption for use of a burn barrel or incinerator if they are currently prohibited under existing air district rules. Similarly, an exemption cannot be requested for the area

covered by a more stringent local ordinance or other enforceable mechanism prohibiting their use.

- (e)(9) On or before May 1, 2003, and every ten years thereafter, the ARB shall provide the air districts with a listing of all incorporated places and the population density within the boundaries of each census zip code contained within each air district.

To assist the air districts and provide a consistent and official calculation, the ARB will publish a map and/or list of all incorporated cities and towns and the population density of each census zip code. The calculation will use the most recent decennial U.S. census data available. The population density of each census zip code will be determined after subtracting the population and associated area of all incorporated cities and towns within the census zip code. Where census zip code boundaries cross air district boundaries, separate population densities will be calculated for the portion within each air district. This process will be repeated every ten years, consistent with the timeframe for the exemption renewal process.

- (e)(10) Any Request for Exemption by an air district shall be submitted in writing to the ARB on or before August 1, 2003, and every ten years thereafter and shall include all of the following:
- (A) a resolution, board order, or other enforceable mechanism adopted at a formal public meeting approving the Request for Exemption; and
 - (B) a written commitment from the air district to provide information on the hazards associated with residential waste burning, and ways to minimize these hazards, to all persons conducting residential waste burning using either an air district or appropriate fire protection agency permit program for residential waste burning, or other equivalent mechanism; and
 - (C) to allow the burning of dry non-glossy paper and cardboard where the population density is greater than 3.0 but less than or equal to 10.0 within the boundaries of census zip codes within an air district, a finding by the air district that the exemption is necessary; and
 - (D) to allow the use of burn barrels or incinerators where the population density is greater than 3.0 but less than or equal to 10.0 within the boundaries of census zip codes within an air district, written documentation from the chief fire official with primary jurisdiction over fire safety within the area contained within the census zip code, including references to fire codes (where applicable), that an unacceptable fire risk would occur if the prohibition set forth in subsection (c)(2) for that area remained in effect; and

- (E) for census zip code sub-areas, documentation showing the population, land area, and population density of each census zip code sub-area and providing specific, enforceable, geographic boundaries; and
- (F) a list of the specific exemptions requested, for each applicable census zip code and census zip code sub-area, that are included in the Request for Exemption; and
- (G) a finding that all incorporated places within the boundaries of the census zip code or census zip code sub-area within an air district are excluded from the Request for Exemption; and
- (H) a finding that the air district considered the health risks to all populated communities that are within exempted areas; and
- (I) a statement in the resolution, board order, or other enforceable mechanism specifying that the exemption for any census zip code sub-area to burn dry non-glossy paper and cardboard and use a burn barrel shall expire on January 1, 2009 unless justified and renewed for an additional five years prior to that date; and
- (J) a statement in the resolution, board order, or other enforceable mechanism specifying that there is no air district rule, local ordinance, or other enforceable mechanism that was in effect on January 4, 2002, that would otherwise prohibit the burning of dry-non-glossy paper and cardboard; and
- (K) a statement in the resolution, board order, or other enforceable mechanism specifying that there is no air district rule, local ordinance, or other enforceable mechanism that was in effect on January 4, 2002, that would otherwise prohibit the use of a burn barrel or incinerator.

Air districts will be required to submit their Requests for Exemption to the ARB by August 1, 2003. The Governing Board of the air district must hold a public meeting to approve the Request for Exemption and submit a resolution, board order, or other enforceable mechanism. These criteria have been established to ensure that the health risks of burning are considered, and that the Governing Board makes a finding that the need for continued burning outweighs these risks.

The air district must distribute educational materials about the health risks associated with residential burning, using either an air district or fire agency written permit program or other equivalent mechanism to distribute this information. This provides a continued mechanism for households conducting burning to be aware of the health risks, with the goal of reducing the number of households participating in this practice.

In order to request an exemption for the burning of paper, the air district must make a finding that the exemption for these materials is necessary.

In order to request use of a burn barrel, the chief fire official with jurisdiction over the census zip codes or sub-areas must provide written documentation that there is an overriding fire safety concern necessitating their use. This is in recognition that in these more rural areas, the response time for escaped fires may be long and may outweigh the air quality/enforcement benefits of prohibiting use of the burn barrel.

The air district must provide documentation that all incorporated places within the census zip code have been excluded from the exemption, that the health risks to unincorporated communities have been considered, and that no air district rules or local ordinances or other enforceable mechanisms already prohibit the burning of paper and cardboard or the use of burn barrels.

Finally, the air district must identify all exemption areas and the specific exemptions requested, including documenting the population, land area, and density of any sub-areas within a census zip code.

- (e)(11) ARB shall review the air district's Request for Exemption for completeness and approve or reject the Request for Exemption, in writing, within 60 days after submittal.

The ARB will review an air district's exemption request for completeness, to ensure that all of the required components have been included. This will also provide the ARB with the information needed to formally identify exemption areas as required in subsection (e)(13).

- (e)(12) If the air district's Request for Exemption is not complete, the ARB shall return the Request for Exemption to the air district for amendment. The air district shall have an additional 30 days to submit a revised Request for Exemption.

This clause has been included to provide a mechanism to return the exemption request to the air district if any of the required components are missing. It is ARB's intent to work with the air districts to ensure that the needed materials are submitted and approved.

- (e)(13) By January 1, 2004, and every ten years thereafter, the ARB shall make available a listing of all census zip codes and census zip code sub-areas within each air district that are exempt according to the

criteria specified in subsections (e)(2), (e)(3) and (e)(5) and as approved by the ARB.

After receipt and approval of all exemption requests, the ARB will publish a map and/or list of all census zip codes and sub-areas that have been approved for exemption and the specific exemptions approved.

- (e)(14) Notwithstanding the provisions set forth in subsection (e)(10)(I), all exemptions shall terminate on December 31, 2013, and as appropriate every ten years thereafter, unless renewed by the air district pursuant to the procedures set forth in subsections (e)(10) through (e)(12).

This clause provides a ten year review and renewal process for exemption areas. This ten year cycle is consistent with the availability of updated census data for determination of population densities. Renewal of exemptions will follow the same procedures used for the initial exemption request.